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In the Supreme Court of the United States

OCTOBER TERM, 1984

CHARLES GRIFFIN AND
JEROME GRIFFIN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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BEST AVAILABLE COPY

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Petitioner contends that the court of appeals erred in reversing an order suppressing evidence seized during a warrantless inventory search of an automobile.

On December 3, 1982, petitioners were charged in an indictment returned in the United States District Court for the Northern District of Indiana with possessing 805 grams of phencycledine with intent to distribute, in violation of 21 U.S.C. 841(a)(1). On March 21, 1983, the district court suppressed as evidence the phencycledine, which had been seized from a tape-wrapped package contained in a bag found in a warrantless inventory of a two-seat sports car impounded following the arrest of petitioner Jerome Griffin, its driver, and petitioner Charles Griffin, its passenger. It concluded that although the impoundment was legal and the subsequent routine inventory search was reasonable, it

was unlawful for the arresting officer to open both the tape-wrapped package and the paper bag after he removed the bag from an unlocked storage compartment behind the passenger's seat. Pet. App. 26a-59a. It ruled that rather than opening the bag and package, the officer should simply have inventoried "one brown bag" or "one tape-wrapped package." The court of appeals reversed, with one judge dissenting (Pet. App. 1a-25a; 729 F.2d 475).

Petitioners contend (Pet. 7-10) that a warrantless inventory search of the interior of a motor vehicle may not properly extend to the search of a sealed container in an unlocked compartment of the vehicle. Petitioners also contend (Pet. 10-13) that the evidence failed to show that the search was performed in accordance with a standard inventory procedure. Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court.[1] The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to suppress. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If, on the other hand, petitioners are convicted and their conviction is affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

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[1]It is now over 19 months since the return of the indictment and more than 15 months since the district court's suppression order. Further interlocutory review at this time would cause additional delay in trial of the charges against petitioners.

[2]Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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